

1 Mark Kleiman (SBN 115919)  
[mark@krlaw.us](mailto:mark@krlaw.us)  
2 KLEIMAN / RAJARAM  
3 12121 Wilshire Blvd., Ste. 810  
4 Los Angeles, CA 90025  
Tel: 310-392-5455 / Fax: 310-306-8491

5 Collin Poirot (NY 5673405)  
(*pro hac vice*)  
[cpoirot.law@gmail.com](mailto:cpoirot.law@gmail.com)  
6 2603 Oak Lawn, Suite 300  
7 Dallas TX 75219  
8 214-392-2281

9 Attorneys for Defendants  
10 CODEPINK WOMEN FOR PEACE  
CODEPINK ACTION FUND

11 UNITED STATES DISTRICT COURT  
12 FOR THE CENTRAL DISTRICT OF CALIFORNIA

13 WESTERN DIVISION

15 RONEN HELMANN, CAMERON  
16 HIGBY, and JUDIT MAULL,

17 Plaintiffs,

18 v.

20 CODEPINK WOMEN FOR PEACE, a  
21 California entity, CODEPINK ACTION  
22 FUND, a California entity, HONOR THE  
EARTH, a Minnesota entity,  
COURTNEY LENNA SCHIRF, and  
REMO IBRAHIM, d/b/a PALESTINIAN  
YOUTH MOVEMENT, and JOHN AND  
JANE DOES 1-20,

26 Defendants.

Case No. 2:24-cv-05704-SVW-PVC

DEFENDANTS' CODEPINK  
WOMEN FOR PEACE AND  
CODEPINK ACTION FUND,  
NOTICE OF MOTION AND  
MOTION TO DISMISS  
PLAINTIFFS' COMPLAINT

Judge: Hon Stephen V. Wilson  
Hearing Date: November 25, 2024  
Time: 1:30 p.m.  
Courtroom: 10A

1 TO ALL PARTIES AND THEIR COUNSEL OF RECORD:

2 PLEASE TAKE NOTICE THAT on November 25, 2024, at 1:30 p.m. or as  
3 soon thereafter as this matter may be heard in Courtroom 10A of the above-entitled  
4 Court located at First Street Courthouse, 350 W. 1st Street, Courtroom 10A, 10th  
5 Floor, Los Angeles, CA 90012, Defendants CODEPINK WOMEN FOR PEACE  
6 and CODEPINK ACTION FUND, will and hereby do move the Court to dismiss  
7 Plaintiffs Complaint pursuant to Fed.R.Civ.Proc. §§ 12(b)(1) and 12(b)(6).

8 This motion is based upon this Notice of Motion, the attached Memorandum  
9 of Points & Authorities, the Declaration in Support thereof, the files and records in  
10 the case, and any evidence or argument that may be presented at a hearing on this  
11 matter.

12 Respectfully submitted,

13 Dated: October 24, 2024

KLEIMAN / RAJARAM

15 By: \_\_\_\_\_  
16

17 Mark Kleiman

18 Attorneys for Defendants

19 CODEPINK WOMEN FOR PEACE

20 CODEPINK ACTION FUND

21

22

23

24

25

26

27

28

## TABLE OF CONTENTS

	<u>Page</u>
1 TABLE OF AUTHORITIES.....	5
2 MEMORANDUM OF POINTS AND AUTHORITIES.....	9
3 I. INTRODUCTION.....	9
4 II. FACTS ALLEGED .....	9
5     A. Plaintiffs Fail to Tie CodePink to Any Alleged Harms .....	9
6 III. STANDARDS OF REVIEW .....	10
7     A. Fed.R.Civ.Proc. 12(b)(1) and the Attendant Standing 8         Requirements.....	10
9     B. Fed.R.Civ.Proc. 12(b)(6) Requires Facts Sufficient to 10         Make a Claim Plausible .....	11
11 IV. ELEMENTS OF THE ALLEGED OFFENSES .....	12
12     A. FACE Act (18 U.S.C. §248) and California FACE Act 13         (Cal. Pen. Code §423.2(b) et seq.....	12
14     B. Ku Klux Klan Act (42 U.S.C. §1985(3)) .....	13
15     C. Ku Klux Klan Act (42 U.S.C. §1986).....	14
16 V. ARGUMENT .....	15
17     A. Plaintiffs Cameron Higby and Judit Maull Lack Standing 18         to Bring this Action and Must be Dismissed .....	15
19         1. Plaintiffs Higby and Maull Lack Standing Under the FACE 20             Act and the California FACE Act.....	15
21         2. Plaintiffs Higby and Maull Lack Standing Under 22             42 U.S.C. § 1985(3) .....	16

1	3. All the Plaintiffs' Claims Under the Federal FACE Act and the California FACE Act Fail Under Rule 12(b)(6).....	17
2	a. Plaintiffs Fail to Allege Facts that Plausibly Show CodePink Used Force, Threats of Force, or Physical Obstruction to Interfere with Their Freedom of Religion .....	17
3	b. No facts alleged plausibly show that Defendant CodePink intended to injure, interfere with, or intimidate Plaintiffs while Plaintiffs exercised their freedom of religion .....	20
4	c. Plaintiffs Have Alleged No Facts Allowing Them to Plausibly Claim That CodePink is Responsible for any Harmful Acts.....	21
5	4. CodePink's Alleged Activities Constitute Protected First Amendment Speech and Advocacy .....	23
6	5. Plaintiffs' Claims Under 42 U.S.C. § 1985(3) and § 1986 Fail Under Rule 12(b)(6) .....	24
7	a. Plaintiffs Fail to Allege that Any Conspirator was a State Actor, or that the Conspiracy was Aimed at State Action.....	24
8	b. Plaintiffs Do Not Plausibly Allege A Racial Or Class-Based Animus.....	24
9	c. Plaintiffs Do Not Plausibly Allege That Their Harms Are Fairly Traceable To Defendants CodePink .....	25
10	6. Plaintiffs' Claims Under 42 U.S.C. § 1986 Must Also Be Dismissed .....	27
11	VI. CONCLUSION .....	27
12		
13		
14		
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

## **TABLE OF AUTHORITIES**

Page	
2	<i>Alaska Right to Life Political Action Comm. v. Feldman</i> , 504 F.3d 840 (9th Cir. 2007).....25
3	
4	<i>Allen v. Wright</i> , 468 U.S. 737 (1984).....11
5	
6	<i>Ashcroft v. Iqbal</i> , 556 U.S. 662 (2009).....11,27
7	
8	<i>Bell Atl. Corp. v. Twombly</i> , 550 U.S. 544, 127 S.Ct. 1955, 167 L.Ed.2d 868 (2009).....11,27
9	
10	<i>Boquist v. Courtney</i> , 32 F.4th 764 (9th Cir. 2022).....25
11	
12	<i>Bray v. Alexandria Women's Health Clinic</i> , 506 U.S. 263, 113 S.Ct. 753 (1993).....14
13	
14	<i>Carbon Fuel Co. v. UMW</i> , 444 U.S. 212 (1979).....28
15	
16	<i>Clapper v. Amnesty Int'l.</i> USA, 568 U.S. 398, (2013).....26
17	
18	<i>Collins v. Jordan</i> , 110 F.3d 1363 (9th Cir. 1996).....23
19	
20	<i>Comm. to Protect our Agric. Water v. Occidental Oil &amp; Gas Corp.</i> , 235 F. Supp. 3d 1132 (E.D. Cal. 2017).....13,14
21	
22	<i>Conservation Force v. Salazar</i> , 646 F.3d 1240 (9th Cir. 2011).....12
23	
24	<i>Coronado Coal Co. v. Mine Workers</i> , 268 U.S. 295 (1925).....22
25	
26	<i>Counterman v. Colorado</i> , 600 U.S. 66 (2023).....19
27	
28	<i>Cousins v. Lockyer</i> , 568 F.3d 1063 (9th Cir. 2009).....11
29	
30	<i>Dahlia v. Rodriguez</i> , 735 F.3d 1060 (9th Cir. 2013).....11
31	
32	<i>Fabricant v. Elavon, Inc</i> , 2:20-cv-02960-SVW-MAA at 13-14 .....21,22

1	<i>Gaxiola v. City of Los Angeles</i> , No. CV 10-6632 AHM (FMO), 2011 WL 13152832, at *9 (C.D. Cal. Aug. 30, 2011) .....	14
3	<i>Harmston v. City &amp; County of San Francisco</i> , 627 F.3d 1273 (9th Cir. 2010) .....	25
5	<i>Kindschy v. Aish</i> , 412 Wis.2d 319 (Sup. Ct. Wis. 2024) .....	19
7	<i>Kokkonen v. Guardian Life Ins. Co. of America</i> , 511 U.S. 375, 114 S.Ct. 1673, 128 L.Ed. 2d 391 (1994) .....	10
9	<i>Kristensen v. Credit Payment Servs. Inc.</i> , 879 F.3d 1010 (9th Cir. 2018) .....	22
10	<i>Laughon v. Int'l Alliance of Theatrical Stage Emples.</i> , 248 F.3d 931 (9th Cir. 2001) .....	22,23
11	<i>Lotierzo v. A Woman's World Med. Ctr.</i> , 278 F.3d 1180 (11th Cir. 2002) .....	13
13	<i>Lexmark Int'l, Inc. v. Static Control Components, Inc.</i> , 134 S. Ct. 1377 (2014) .....	11
15	<i>Lujan v. Defenders of Wildlife</i> , 504 U.S. 555, 112 S.Ct. 2130, 119 L.Ed. 2d 351 (1992) .....	10,11,26
16	<i>Manistee Town Center v. City of Glendale</i> , 227 F.3d 1090 (9th Cir. 2000) .....	14
18	<i>McCalден v. California Library Ass'n</i> , 955 F.2d 1214 (9th Cir. 1990) .....	25
19	<i>NAACP v. Clairborne Hardware Co.</i> , 458 U.S. 886 (1982) .....	18
21	<i>Native Village of Kivalina v. Exxon Mobil Corp.</i> , 696 F.3d 849 (9th Cir. 2012) .....	11
22	<i>New Beginnings Ministries v. George</i> , 2018 WL 11378829, *15 (S.D.O.H. 2018) .....	13
24	<i>Pasadena Republican Club v. W. Just. Ctr.</i> , 985 F.3d 1161 (9th Cir. 2021) .....	13,24
26	<i>Planned Parenthood of Columbia/Willamette, Inc. v.</i> <i>Am. Coal. of Life Activists</i> , 290 F.3d 1058, (9th Cir. 2002) .....	18
27	<i>RK Ventures, Inc. v. City of Seattle</i> , 307 F.3d 1045 (9th Cir. 2002) .....	14

1	<i>Scott v. Kuhlmann</i> , 746 F.2d 1377 (9th Cir. 1984) .....	25
2		
3	<i>Security Farms v. International Broth. of Teamsters, Chauffeurs</i> , 124 F.3d 999 (9th Cir. 1997) .....	23
4		
5	<i>Sever v. Alaska Pulp Corp.</i> , 978 F.2d 1529 (9th Cir. 1992) .....	14,24
6		
7	<i>Simo v. Union of Needletrades, Indus. &amp; Textile Emps., Sw. Dist. Council</i> , 322 F.3d 602 (9th Cir. 2003) .....	22
8		
9	<i>Sprewell v. Golden State Warriors</i> , 266 F.3d 979 (9th Cir. 2001) .....	12
10		
11	<i>Trerice v. Pedersen</i> , 769 F.2d 1398 (9th Cir. 1985) .....	15,27
12		
13	<i>United Bhd. of Carpenters &amp; Joiners, Local 610 v. Scott</i> , 463 U.S. 825 103 S.Ct. 3352, 77 L.Ed.2d 1049 (1983) .....	14,24,25
14		
15	<i>Wagar v. Hasenkrug</i> , 486 F. Supp. 47 (D. Mont. 1980) .....	15,27
16		
17	<i>Williams v. Yamaha Motor Co.</i> , 851 F.3d 1015 (9th Cir. 2017) .....	21
18		
19	<b><u>STATUTES</u></b>	
20		
21	18 U.S.C. § 248 .....	12,13
22		
23	18 U.S.C. § 248(a)(2) .....	12,17,20
24		
25	18 U.S.C. § 248(c)(1)(A) .....	12,16
26		
27	18 U.S.C. § 248(d)(1) .....	23
28		
29	18 U.S.C. § 248(e) .....	21
30		
31	18 U.S.C. § 248(e)(4) .....	19,20
32		
33	42 U.S.C. § 1985(3) .....	<i>passim</i>
34		
35	42 USC § 1986 .....	<i>passim</i>
36		
37	Cal Pen. Code § 423.1 .....	20
38		
39	Cal. Pen. Code § 423.1(a) .....	13
40		
41	Cal Pen. Code § 423.2 .....	16,20
42		

1	Cal. Pen. Code § 423.2(b).....	12,13,17
2	Cal. Pen. Code § 423.4(a).....	16
3	Cal. Pen. Code § 423.4(c).....	16
4	Cal. Pen. Code § 423.6(a).....	23
5	Fed.R.Civ.Proc. 12(b)(1) .....	<i>passim</i>
6	Fed.R.Civ.Proc. 12(b)(6) .....	16
7		
8	<b><u>MISCELLANEOUS</u></b>	
9	29 U.S.C.S. § 185, the Taft-Hartley Act, § 301(b).....	22
10	139 Cong. Rec. S15660, 1993 WL 470962 (Nov. 3, 1993) .....	18
11	H.R. Conf. Rep No. 103-488, 9 (1994) .....	19
12	Norris-LaGuardia Act § 6, 29 U.S.C. § 106 .....	22
13	S. Rep. 117, 103d Cong. 1st Sess. 31 (1993) .....	19
14	Art. III, U.S. Const.....	10
15		
16		
17		
18		
19		
20		
21		
22		
23		
24		
25		
26		
27		
28		

## **MEMORANDUM OF POINTS AND AUTHORITIES**

## I. INTRODUCTION

This motion calls on the Court to decide the following questions:

- 1) Can a video blogger who had no religious interest in entering a place of worship sue because there is a crowd in front of that place of worship?
- 2) Can a curious driver park, approach a crowd to see what is going on, and then sue, claiming that her path to a temple she had no intention of entering has been blocked?
- 3) Can an organization that called on people to bring banners and megaphones to protest the sale of land in militarily occupied territories be blamed when strangers to that organization allegedly do more than wave signs and chant?
- 4) Does an organization that only calls for a protest be sued when there are no facts showing it encouraged the use of force and no facts showing an intent to injure anyone?
- 5) In a time when a Jewish United States Senator demands that all arms shipments to Israel be halted, does a protest of illegal land sales identified as possible war crimes by the International Court of Justice constitute class-based animus, or does it remain constitutionally protected free speech?
- 6) Where many organizations call for a demonstration, and there are no factual allegations supporting the claim that one of those groups directed its members to blockade an entrance or threaten violence, and no allegations supporting a claim that such conduct was ratified, can that group be held liable for the conduct of those who are strangers to it?

## **II. FACTS ALLEGED**

#### A. Plaintiffs Fail to Tie CodePink to Any Alleged Harms

Plaintiffs allege that CodePink “organized, publicized, aided, and funded” the demonstration (FAC ¶5); “used social media and/or other means to incite followers

1 to converge in front of a synagogue... and to use fear and intimidation tactics to  
2 prevent Jewish people from entering the synagogue" (FAC ¶¶2, 11); told their  
3 supporters that "A Mega Zionist Real Estate Event is in LA This Week" (FAC ¶24);  
4 "incited its followers to 'bring flags, posters, and megaphones. No Peace on Stolen  
5 Land" (FAC ¶25); the demonstration occurred on a Sunday (FAC ¶ 30) and  
6 CodePink later "justified the attack on the synagogue on the basis that 'no religious  
7 services were scheduled'" (FAC ¶70). Plaintiffs further allege that unidentified  
8 people sprayed them with "bear spray" (FAC ¶37, 53), and that "members of  
9 CodePink... upon receiving encouragement from Defendants, participated in the  
10 violence" (FAC ¶96).

11 Once relieved of legally conclusory language and restatements of the alleged  
12 offenses' elements, the facts asserted against CodePink boil down to First  
13 Amendment protected speech activity. None of the pled facts can support Plaintiffs'  
14 claims under the invoked statutes, and in fact, the First Amended Complaint  
15 includes facts that make it impossible for Plaintiffs to plead these causes of action.  
16 For these reasons, the complaint should be dismissed with prejudice.

17 **III. STANDARDS OF REVIEW**

18 **A. Fed.R.Civ.Proc. 12(b)(1) and the Attendant Standing Requirements**

19 Federal courts have limited jurisdiction *see*, Art. III, U.S. Const. and Plaintiffs  
20 must prove their case lies within a court's jurisdiction. Kokkonen v. Guardian Life  
21 Ins. Co. of America, 511 U.S. 375, 377-78, 114 S.Ct. 1673, 128 L.Ed. 2d 391  
22 (1994). Plaintiff must establish they have (1) suffered an injury in fact, (2) that is  
23 fairly traceable to the challenged conduct of the defendant, and (3) that is likely to  
24 be redressed by a favorable judicial decision. Lujan v. Defenders of Wildlife, 504  
25 U.S. 555, 560-561, 112 S.Ct. 2130, 119 L.Ed. 2d 351 (1992). Plaintiff "bears the  
26 burden of establishing these elements" and "at the pleading stage, [he] must clearly  
27 allege facts demonstrating each element." Id. (citation omitted). It is black letter law

1 that the injury pled must “be fairly traceable to the challenged action of the  
2 defendant, and not the result of the independent action of some third party not  
3 before the court.” Lujan, 504 U.S. at 560-61 (citation omitted). Further, “the line of  
4 causation between the [alleged] illegal conduct and injury” must not be “too  
5 attenuated.” Allen v. Wright, 468 U.S. 737, 752 (1984) (concluding that a weak  
6 demonstration of causation precludes Article III standing), *overruled on other*  
7 *grounds by Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 134 S. Ct. 1377,  
8 1388 (2014). Since the line of causation must be more than attenuated, “where the  
9 causal chain ‘involves third parties whose numerous independent decisions  
10 collectively have a significant effect on plaintiffs’ injuries . . . the causal chain [is]  
11 too weak to support standing at the pleading stage.’” (citations and internal  
12 quotation marks omitted). Native Village of Kivalina v. Exxon Mobil Corp., 696  
13 F.3d 849, 867 (9th Cir. 2012).

14       **B. Fed.R.Civ.Proc. 12(b)(6) Requires Facts Sufficient to Make a Claim**  
15                   **Plausible**

16       Although “a complaint need not contain detailed factual allegations . . . it  
17 must plead enough facts to state a claim to relief that is plausible on its face.”  
18 Cousins v. Lockyer, 568 F.3d 1063, 1067-68 (9th Cir. 2009) (internal quotation  
19 marks and citations omitted). A claim is facially plausible only when it “allows the  
20 court to draw the reasonable inference that the defendant is liable for the misconduct  
21 alleged.” Ashcroft v. Iqbal, 556 U.S. 662, 678, (2009) (internal quotation marks  
22 omitted). “[C]onclusory allegations of law and unwarranted inferences are  
23 insufficient to avoid . . . dismissal” under this standard. Cousins, 568 F.3d at 1067  
24 (internal quotation marks omitted). A court may reject as implausible allegations  
25 that are too speculative to warrant further factual development. Dahlia v. Rodriguez,  
26 735 F.3d 1060, 1076 (9th Cir. 2013). The allegations must be enough to raise a right  
27 to relief above the speculative level. Bell Atl. Corp. v. Twombly, 550 U.S. 544, 548,  
28

1 127 S.Ct. 1955, 167 L.Ed.2d 868 (2009). The court need not accept allegations that  
2 are merely conclusory, are unwarranted deductions, or unreasonable inferences.  
3 Sprewell v. Golden State Warriors, 266 F.3d 979, 988 (9th Cir. 2001).

4 When the guesses, conclusory language, and innuendo are stripped away, what  
5 remains of Plaintiffs' allegations that are grounded in specific facts is this: (1)  
6 CodePink was one of several organizations which called for a demonstration to  
7 oppose a real estate event offering land sales in the occupied West Bank; (2)  
8 CodePink "organized, aided, and funded" the demonstration, and invited its  
9 supporters to bring banners and megaphones; (3) persons unknown acted  
10 threateningly and said frightening things, (4) some unknown persons used "bear  
11 spray"; and (4) CodePink later stated that it had no idea that a temple would be  
12 holding religious services on a Sunday. From these crumbs, Plaintiffs build a  
13 mountain of surmise to insist that CodePink must have directed these activities.  
14 These are not facts sufficient to make a cognizable legal theory plausible.  
15 Conservation Force v. Salazar, 646 F.3d 1240, 1241-42 (9th Cir. 2011).

16 **IV. ELEMENTS OF THE ALLEGED OFFENSES**

17 **A. FACE Act (18 U.S.C. §248) and California FACE Act (Cal. Pen. Code**  
18 **§423.2(b) et seq.**

19 The Freedom of Access to Clinic Entrances Act (FACE Act) was passed in  
20 1994 when women's health clinics were being bombed and doctors who worked  
21 their were being murdered. A far lesser-known provision in the bill protects places  
22 of worship. The law's "place of worship" cause of action has so seldom been  
23 invoked that caselaw interpreting the civil suit provision in 18 U.S.C. § 248(c)(1)(A)  
24 is scarce. Defendants could find no cases from the Ninth Circuit where such a suit  
25 has been brought. Other circuits, however, have identified four elements required to  
26 plead a violation of 18 U.S.C. § 248(a)(2): "Plaintiffs must demonstrate that  
27 Defendants used or attempted to use (1) force, threat of force, or physical

1 obstruction; (2) with the intent to; (3) injure, intimidate, or interfere with a person;  
2 (4) because that person is exercising or is seeking to exercise his or her right of  
3 religious freedom at a place of religious worship.” New Beginnings Ministries v.  
4 George, 2018 WL 11378829, \*15 (S.D.O.H. 2018) (citing Lotierzo v. A Woman’s  
5 World Med. Ctr., 278 F.3d 1180, 1182 (11th Cir. 2002) (citations omitted)).

6 The California FACE Act has nearly identical language to the federal FACE  
7 Act, except that it adds a requirement that where a claim is based on an alleged  
8 physical obstruction, that physical obstruction must also be a crime of violence. Cal.  
9 Pen. Code § 423.2(b). The statute interprets “crime of violence” to mean “an offense  
10 that has as an element the use, attempted use, or threatened use of physical force.”  
11 Cal. Pen. Code § 423.1(a). As such, to state a claim under the California FACE Act,  
12 the Plaintiffs must show that the elements of 18 U.S.C. § 248 are met, and that any  
13 alleged physical obstruction was also a crime of violence. Defendants are not aware  
14 of any civil suit that has been brought under Cal. Pen. Code § 423.2(b).

15 **B. Ku Klux Klan Act (42 U.S.C. §1985(3))**

16 To state a claim under 42 U.S.C. § 1985(3), “plaintiffs must allege and prove  
17 four elements: (i) a conspiracy; (ii) for the purpose of depriving, either directly or  
18 indirectly, any person or class of persons of the equal protection of the laws, or of  
19 equal privileges and immunities under the laws; and (iii) an act in furtherance of this  
20 conspiracy; (iv) whereby a person is either injured in his person or property or  
21 deprived of any right or privilege of a citizen of the United States.” Comm. to  
22 Protect our Agric. Water v. Occidental Oil & Gas Corp., 235 F. Supp. 3d 1132, 1185  
23 (E.D. Cal. 2017).

24 The cause of action under 42 U.S.C. § 1985(3) “requires at least one of the  
25 wrongdoers in the alleged conspiracy to be a state actor. Indeed, the Supreme Court  
26 has held that ‘an alleged conspiracy to infringe First Amendment rights is not a  
27 violation of § 1985(3) unless it is proved that the State is involved in the

1 conspiracy” or that the aim of the conspiracy is to influence state actors. Pasadena  
2 Republican Club v. W. Just. Ctr., 985 F.3d 1161, 1171 (9th Cir. 2021) (citing United  
3 Bhd. of Carpenters & Joiners, Local 610 v. Scott, 463 U.S. 825, 830, 103 S.Ct.  
4 3352, 77 L.Ed.2d 1049 (1983).

5 To plead a claim under 42 U.S.C. § 1985(3), a plaintiff must also plausibly  
6 allege that the intended deprivation was ““motivated by some racial, or ... other[ ]  
7 class-based’ animus.” Comm. to Protect our Agric. Water v. Occidental Oil & Gas  
8 Corp., 235 F. Supp. 3d 1132, 1185 (E.D. Cal. 2017) (citing Sever v. Alaska Pulp  
9 Corp., 978 F.2d 1529, 1536 (9th Cir. 1992); *see also* Manistee Town Center v. City  
10 of Glendale, 227 F.3d 1090 (9th Cir. 2000); Gaxiola v. City of Los Angeles, No. CV  
11 10-6632 AHM (FMO), 2011 WL 13152832, at \*9 (C.D. Cal. Aug. 30, 2011) (“To  
12 avoid interpreting § 1985(3) as a general federal tort law, the Supreme Court has  
13 emphasized that, as under § 1981, the plaintiff must prove as an element of the  
14 cause of action ‘some racial, or perhaps otherwise class-based, invidiously  
15 discriminatory animus behind the conspirators’ action’” (citing Bray v. Alexandria  
16 Women's Health Clinic, 506 U.S. 263, 268, 113 S.Ct. 753, 758 (1993)); RK  
17 Ventures, Inc. v. City of Seattle, 307 F.3d 1045, 1056 (9th Cir. 2002) (To bring a  
18 cause of action successfully under § 1985(3), a plaintiff must demonstrate a  
19 deprivation of a right motivated by “some racial, or perhaps otherwise class-based,  
20 invidiously discriminatory animus behind the conspirators’ action”). 42 U.S.C. §  
21 1985(3) does not extend to “conspiracies motivated by bias towards others on  
22 account of their economic views, status, or activities.” United Bhd. of Carpenters  
23 and Joiners of Am, Local 610, AFL-CIO v. Scott, 463 U.S. 825, 837 (1983).

24 **C. Ku Klux Klan Act (42 U.S.C. §1986)**

25 In order to state a claim under 42 USC § 1986, Plaintiffs must plausibly allege  
26 (1) that Defendants knew of a conspiracy to interfere with civil rights under 42 USC  
27 § 1985(3); (2) that the intended deprivation of equal protection of the laws under 42  
28

1 USC § 1985(3) occurred; (3) that Defendants knew that the deprivation was about to  
2 occur; (4) that Defendants had the power to prevent or aid in preventing the  
3 deprivation; and (5) that Defendants neglected or refused to prevent or aid in  
4 preventing the deprivation. 42 USC § 1986. Plaintiffs fail to plausibly allege a  
5 conspiracy under 42 U.S.C. § 1985(3) as they are unable to meet the requirements  
6 for a claim under 42 U.S.C. § 1986. Trerice v. Pedersen 769 F.2d 1398 (9th Cir.  
7 1985); *see also* Wagar v. Hasenkrug, 486 F. Supp. 47 (D. Mont. 1980) (holding that  
8 the dismissal of a claim under 42 U.S.C. § 1985(3) requires dismissal of any  
9 companion claim under 42 U.S.C. § 1986 for failure to prevent the alleged  
10 conspiracy).

11 **V. ARGUMENT**

12     **A. Plaintiffs Cameron Higby and Judit Maull Lack Standing to Bring**  
13         **this Action and Must be Dismissed<sup>1</sup>**

14         Plaintiffs Higby and Maull never claim to have had any intention of  
15 worshipping at the synagogue nor engaging in any other activity protected by the  
16 Constitution. Their only concrete injury is that they were bear-sprayed by an  
17 unidentified third party. As such, they have no standing to bring this suit under the  
18 Civil Rights Act, and are explicitly prohibited from bringing this claim under the  
19 federal and California FACE Act statutes. They have no standing to sue CodePink  
20 on any of the plead theories and must be dismissed with prejudice.

21         **1. Plaintiffs Higby and Maull Lack Standing Under the FACE Act**  
22             **and the California FACE Act**

23         There can be no debate. Plaintiffs Higby and Maull have no standing to sue  
24 under either the federal or California FACE Acts. The federal FACE Act explicitly  
25

26         

---

<sup>1</sup> Since Plaintiffs knowingly filed a defective “Notice of Voluntary Dismissal” CodePink must  
27 assume that Higby and Maull remain in the action and that we must move for an order dismissing  
28 them. We are sorry the Court must therefore read through an argument that should have been  
mooted by the filing of an amended complaint – but we have no choice but to treat them as parties.

1 states that a civil action under the statute “may be brought under subsection (a)(2)  
2 only by a person lawfully exercising or seeking to exercise the First Amendment  
3 right of religious freedom at a place of religious worship or by the entity that owns  
4 or operates such place.” 18 USC § 248(c)(1)(A). The California FACE Act contains  
5 the same standing limitation. Cal. Pen. Code § 423.4(a).

6 Plaintiffs’ First Amended Complaint fails to allege any facts that plausibly  
7 show that Higby or Maull were exercising or seeking to exercise the First  
8 Amendment right of religious freedom at the time in question. Higby is “a journalist  
9 and videographer” who “commonly covers protests” (FAC ¶10). In this case, Higby  
10 alleges no intention of attending or accessing Adas Torah, but only that he attended  
11 the protest in order “to take videos and post updates to the public and his followers.”  
12 Id. Maull saw a crowd and parked her car to see what was going on. (FAC ¶57.) As  
13 the crowd grew, Maull stood next to people who were singing songs to drown out  
14 the noise. (FAC ¶60.) Maull’s only claimed intention was to “find out what was  
15 going on.” (FAC ¶11). Neither Higby nor Maull ever claim they were exercising or  
16 seeking to exercise their freedom of religion, and thus have no standing.

17 Finally, Plaintiffs cannot seek to impose liability under both the federal and  
18 state FACE Acts at the same time. Cal. Penal Code §423.4(c) (“No person shall be  
19 found liable under this section for conduct in violation of Section 423.2 done on a  
20 particular occasion where the identical conduct on that occasion was the basis for a  
21 finding of liability by that person under the federal Freedom of Access to Clinic  
22 Engrances Act of 1994.”)

23 **2. Plaintiffs Higby and Maull Lack Standing Under 42 U.S.C.**  
24 **§1985(3) and §1986.**

25 Plaintiffs cannot meet the standing requirements as they have not and cannot  
26 show a causal connection between their concrete injuries and CodePink’s culpable  
27 conduct. Higby and Maull cannot plausibly claim their rights to freedom of religion  
28

1 or of assembly were violated because they have admitted that neither was even  
2 attempting to engage in those protected activities at the time of the protest. The only  
3 concrete injury Higby and Maull can claim is that they were sprayed with bear spray  
4 by an unidentified person in the midst of a chaotic physical confrontation. This  
5 claimed injury depends entirely on the actions of third parties, and is not fairly  
6 traceable to the complained-of conduct by CodePink nor to any conspiracy under 42  
7 U.S.C. § 1985(3). Not a single fact in the Amended Complaint that can plausibly  
8 show that CodePink ordered, authorized, or ratified the actions of the unidentified  
9 individuals who caused the Plaintiffs' only concrete injuries. Absent a direct causal  
10 relationship between the allegedly culpable conduct and the claimed injury,  
11 Plaintiffs have no standing to bring this suit against CodePink.

12       **3. All the Plaintiffs' Claims Under the Federal FACE Act and the**  
13       **California FACE Act Fail Under Rule 12(b)(6)**

14       The "place of worship" subsections of the FACE Act and the California  
15 FACE Act have not been addressed by this Court in any published decision. The  
16 two statutes have nearly identical wording; the only substantive distinction is that  
17 the California statute requires Plaintiffs to show that any alleged physical  
18 obstruction was also a "crime of violence." Plaintiffs fail to allege facts that can  
19 plausibly show a violation of either statute.

20       **a. Plaintiffs Fail to Allege Facts that Plausibly Show**  
21       **CodePink Used Force, Threats of Force, or Physical**  
22       **Obstruction to Interfere with Their Freedom of**  
23       **Religion.**

24       Plaintiffs do not plausibly allege that Defendants used force, threats of force,  
25 or physical obstruction against them as required under 18 U.S.C. § 248(a)(2) or Cal.  
26 Pen. Code § 423.2(b). In its legislative history, 18 USC § 248(a)(2)'s sponsor stated  
27 the proposal would "do no more than give religious liberty the same protection that  
28

1 [the FACE Act] would give abortion,” and would address recent violence, including  
2 a protest where activists entered a facility during prayer and threw things at the  
3 congregants, and a series of arson attacks against churches. 139 Cong. Rec. S15660,  
4 1993 WL 470962 (Nov. 3, 1993).

5 A large outspoken demonstration (and a viciously brutal counterprotest) bear  
6 little resemblance to the violent acts contemplated by the statute. Plaintiffs have not  
7 pled a single fact that could plausibly show that CodePink defendants used physical  
8 force against them—the only alleged physical force was used by unidentified  
9 people. Furthermore, Plaintiffs’ own allegations show that any force or threats of  
10 force that may have occurred were not at the direction of CodePink, but resulted  
11 from clashes provoked by the pro-Israel counter-protesters. According to sources  
12 cited in the First Amended Complaint, “clashes started when pro-Israeli protesters  
13 arrived... things turned violent,” and the only person arrested for violence during  
14 the protest was a pro-Israel counter-protestor (FAC fn. 2). These facts do not  
15 plausibly show that CodePink intended or used force or violence, and in fact suggest  
16 that the CodePink demonstration was nonviolent up until the counter-protesters—  
17 over whom CodePink has no power whatsoever—arrived with weapons.

18 Plaintiffs have also failed to plausibly allege that CodePink used a *threat* of  
19 force against them. The First Amendment protects “offensive and coercive speech,”  
20 including “the use of speeches, marches, and threats of social ostracism.” Planned  
Parenthood of Columbia/Willamette, Inc. v. Am. Coal. of Life Activists, 290 F.3d  
22 1058, 1070 (9th Cir. 2002), *as amended* (July 10, 2002) (citing NAACP v.  
23 Clairborne Hardware Co., 458 U.S. 886, 933 (1982)). Where Plaintiffs rely on a  
24 “threat of force” to plead a violation of the FACE Act, they must show that the  
25 threat was a “true threat.” 290 F.3d 1073 (providing that “FACE on its face requires  
26 that ‘threat of force’ be defined and applied consistent with the First Amendment”).  
27  
28

Under the Supreme Court’s true threat doctrine, Defendant’s speech was not a “threat” as speech only qualifies as a “true threat” where “in the entire context and under all the circumstances, a reasonable person would foresee [it] would be interpreted by those to whom the statement is communicated as a serious expression of intent to inflict bodily harm upon that person.” *Id.* at 1077. The Supreme Court recently recognized a recklessness *scienter* requirement for culpable true threats, such that the Defendant must have “consciously disregarded a substantial risk that his communications would be viewed as threatening violence.” Counterman v. Colorado, 600 U.S. 66, 69 (2023). Although Counterman arose in the context of a criminal charge, the *scienter* requirement that it recognized has also been applied to civil causes of action based on threats. *Id.*, at 80-81. *Also see, e.g.* Kindschy v. Aish, 412 Wis.2d 319, 333 (Sup. Ct. Wis. 2024) (directly applying Counterman’s *scienter* rule to a civil dispute).

In this case, Plaintiffs do not plausibly allege that CodePink’s statements are true threats such that they are unprotected by the First Amendment. Plaintiffs do not allege that CodePink’s statements could be interpreted as a serious expression of intent to inflict bodily harm upon them, nor that CodePink was aware of any substantial risk of their communications being viewed as a threat of violence. As such, Plaintiffs fail to plausibly allege CodePink used a threat of force against them.

Plaintiffs also fail to plausibly allege that CodePink engaged in physical obstruction. To plead violation based on physical obstruction, Plaintiffs must specifically show that the alleged obstruction rendered ingress and egress to the facility impossible or unreasonably difficult or hazardous. 18 U.S.C. § 248(e)(4); *see also* S. Rep. 117, 103d Cong. 1st Sess. 31 (1993) (explaining that “physical obstruction” would include blockades, “chaining people and cars to entrances with bicycle locks,” strewing nails on public roads leading to clinics, and “blocking entrances with immobilized cars”); H.R. Conf. Rep No. 103-488, 9 (1994)

1 (clarifying that physical obstruction would include, for example “physically  
2 blocking access to a church or pouring glue in the locks of a synagogue”).

3 Finally, Plaintiffs fail to plausibly allege that CodePink physically made  
4 ingress or egress unreasonably hazardous; only that they called for a political  
5 demonstration outside of the facility, and that there were eventually clashes between  
6 some unidentified individuals in the crowd. This could not be further from the  
7 church burnings and intentional, coordinated physical violence against parishioners  
8 that the FACE Act was intended to prevent. Where Plaintiffs fail to allege CodePink  
9 engaged in physical obstruction of any kind, they cannot meet the additional “crime  
10 of violence” requirement under the California FACE Act.

11 Plaintiffs have therefore failed to allege any facts that can plausibly show  
12 CodePink used force, threats of force, or physical obstruction to interfere with their  
13 freedom of religion under the federal FACE Act or the California FACE Act, and  
14 the claim must be dismissed under Rule 12(b)(6). Cal. Pen. Code § 423.1.

15       **b. No facts alleged plausibly show that Defendant**  
16       **CodePink intended to injure, interfere with, or**  
17       **intimidate Plaintiffs because of Plaintiffs’ exercise of**  
18       **their freedom of religion.**

19 Plaintiff’s conclusory specific facts pled against CodePink are only that the  
20 organization announced a “Mega Zionist Real Estate Event,” and encouraged  
21 supporters to “Bring flags, posters and megaphones. No Peace on Stolen Land”  
22 (FAC ¶24-5, 70). To state a claim for relief under 18 USC § 248(a)(2) or Cal. Pen.  
23 Code § 423.2, Plaintiffs must allege facts that plausibly show Defendants intended  
24 to injure, intimidate, or interfere with them because of their exercise of freedom of  
25 religion. Both statutes define “intimidate” as placing one in “reasonable  
26 apprehension of bodily harm,” and “interfere with” as restricting a person’s freedom  
27 of movement. 18 USC § 248(e); Cal. Pen. Code § 423.1. Plaintiffs fail to allege any  
28

1 facts that plausibly show CodePink had an intent to injure them, restrict their  
2 freedom of movement, or place them in apprehension of bodily harm because of  
3 their exercise of freedom of religion.

4 Strikingly absent from Plaintiff's allegations are any facts that could plausibly  
5 show CodePink intended to injure Plaintiffs, restrict their freedom of movement, or  
6 threaten bodily harm, much less that they intended to do so *because* of Plaintiffs'  
7 exercise of freedom of religion. Plaintiffs do not allege any mention by CodePink of  
8 prayer, worship, Jewish people, or Judaism, nor any call for violence, physical force,  
9 or intimidation. There are also no facts pled that could plausibly show CodePink  
10 intended to injure, restrict the bodily movement of, or threaten violence against  
11 people coming to pray at the synagogue. In fact, the First Amended Complaint  
12 shows that Defendants were *unaware*, and believed that "no religious services were  
13 scheduled" at the time (FAC ¶70). At most, Plaintiffs' alleged facts could show  
14 CodePink intended to make the Real Estate event attendees less comfortable,  
15 discourage people from attending the event, and speak out against an ongoing  
16 genocide, all from a position outside of the building.

17 The facts pled therefore make it impossible for Plaintiffs to plausibly allege  
18 that CodePink intended to injure, intimidate, or interfere with them because of their  
19 exercise of freedom of religion.

20                   c. **Plaintiffs Have Alleged No Facts Allowing Them to**  
21                   **Plausibly Claim That CodePink is Responsible for any**  
22                   **Harmful Acts.**

23 Plaintiffs implicitly rely on an imputed agency relationship to hold CodePink  
24 liable for the acts of the unidentified individuals. Yet Plaintiffs fail to allege facts  
25 making it plausible that CodePink had "the right to substantially control [these  
26 alleged agent's] activities," Williams v. Yamaha Motor Co., 851 F.3d 1015, 1024  
27 (9th Cir. 2017), or how CodePink did these things or knew these things. Fabricant v.  
28

1 Elavon, Inc., 2:20-cv-02960-SVW-MAA, 12-13 (C.D.C.A. 2020). Even where the  
2 principal ratifies an act without knowledge of material facts of the agent's acts, the  
3 principal must still choose to ratify the act while aware that they lack such  
4 knowledge in order to be liable for the act. Fabricant, 2:20-cv-02960-SVW-MAA at  
5 13-14, quoting Kristensen v. Credit Payment Servs. Inc., 879 F.3d 1010, 1014 (9th  
6 Cir. 2018).

7       Even if the unidentified Does *were* CodePink members (which is nowhere  
8 alleged) CodePink can only be responsible under some *respondeat superior* theory.  
9 Other national organizations (for example, labor unions) are only responsible for  
10 members' actions if common law *respondeat superior* doctrines apply. To hold a  
11 union responsible for an agent's acts, under the common law ““it must be clearly  
12 shown . . . that what was done was done by their agents in accordance with their  
13 fundamental agreement of association.”” Carbon Fuel Co. v. UMW, 444 U.S. 212,  
14 217 (1979), quoting Coronado Coal Co. v. Mine Workers, 268 U.S. 295, 304  
15 (1925). Statutes governing labor-management relations imported common law  
16 *respondeat superior* doctrine, *see generally* 29 U.S.C.S. § 185, the Taft-Hartley Act,  
17 § 301(b), Norris–LaGuardia Act § 6, 29 U.S.C. § 106, making a union liable for its  
18 members' acts only where there is “clear proof” of participation, authorization, or  
19 ratification. Simo v. Union of Needletrades, Indus. & Textile Emps., Sw. Dist.  
20 Council, 322 F.3d 602, 620 (9th Cir. 2003). Thus, even courts invoking these  
21 statutes rely upon traditional agency law. Liability turns on the nature and extent of  
22 the actual control an international union exercises over a local union and the local's  
23 degree of autonomy. Laughon v. Int'l Alliance of Theatrical Stage Empls., 248 F.3d  
24 931, 935 (9th Cir. 2001). Without evidence a union has instigated, supported,  
25 encouraged, or ratified acts by its subdivision union, there is no proof of an agency  
26 relationship, and thus a union cannot be held liable for the subdivision union's acts.  
27 Carbon Fuel Co., 444 U.S. at 218; *see also* Simo, 322 F.3d at 620. Even where an  
28

1 individual serves a double role as both the local and international union official,  
2 looking to the organization being served at the time of the conduct, courts “do not  
3 impute the conduct, or knowledge of the conduct, to the international solely by  
4 virtue of the individual's double role.” Laughon, 248 F.3d at 937. Even participating  
5 in negotiations and reporting to the international's representative on the local's  
6 progress fails to demonstrate the international controlled the local in order to impute  
7 liability. Security Farms v. International Broth. of Teamsters, Chauffeurs, 124 F.3d  
8 999, 1012-1013 (9th Cir. 1997).

9 Plaintiffs' allegations are broad and sweeping. They are also devoid of any  
10 facts showing how CodePink did the things it is accused of or how it knew of these  
11 things it is charged with knowing. There are no facts to support that CodePink  
12 controlled any individuals present at the event, nor any facts supporting that  
13 CodePink instigated, authorized, ratified or even encouraged any of the acts named  
14 in the complaint. With no facts to support its broad sweeping allegations, Plaintiffs  
15 have failed to sufficiently plead CodePink's liability via vicarious liability in a  
16 principal-agent relationship.

17       **4. CodePink's Alleged Activities Constitute Protected First**  
18                   **Amendment Speech and Advocacy**

19 Demonstrations, marches, and picketing are undeniably protected First  
20 Amendment activities. Collins v. Jordan 110 F.3d 1363, 1371 (9th Cir. 1996). Even  
21 where protected First Amendment speech becomes intertwined with someone's later  
22 possibly illegal conduct is to punish the conduct, not the speech. *Id.* Both the federal  
23 and California FACE Acts explicitly forbid construing their language to capture  
24 “expressive conduct (including peaceful picketing or other peaceful demonstration)  
25 protected from legal prohibition by the First Amendment to the Constitution[.]” 18  
26 U.S.C. § 248(d)(1); see also Cal. Pen. Code § 423.6(a). Plaintiffs therefore cannot  
27 plausibly allege a violation of either statute based on CodePink's protected speech.  
28

1                   **5. Plaintiffs' Claims Under 42 U.S.C. § 1985(3) and § 1986 Fail**  
2                   **Under Rule 12(b)(6)**

3                   **a. Plaintiffs Fail to Allege that Any Conspirator was a State**  
4                   **Actor, or that the Conspiracy was Aimed at State Action**

5                   Plaintiffs fail to allege a state actor as part of any conspiracy, or that  
6 CodePink was intending to influence state action. To state a claim under 42 U.S.C. §  
7 1985(3), Plaintiffs must plausibly allege that one or more of the conspirators is a  
8 state actor, or that the conspiracy was intended to influence state action. Pasadena  
9 Republican Club v. Western Justice Center, 985 F.3d 1161, 1171 (9th Cir. 2021)  
10 (citing United Bhd. Of Carpenters & Joiners, Local 610 v. Scott, 463 U.S. 825, 830,  
11 103 (1983). The First Amended Complaint contains none of this.

12                  **b. Plaintiffs Do Not Plausibly Allege A Racial Or Class-**  
13                  **Based Animus**

14                  Plaintiffs do not plausibly allege a racial or class-based animus as required  
15 under 42 USC § 1985(3). Sever v. Alaska Pulp Corp., 978 F.2d 1529, 1536 (9th Cir.  
16 1992). Plaintiffs only allege that CodePink told its supporters “that ‘A Mega Zionist  
17 Real Estate Event is in LA This Week,’” and that “an ‘international war crime’ was  
18 about to occur”—specifically, the sale of illegally occupied land (FAC ¶21, 24).  
19 CodePink further clarified that, as far as it was aware, “no religious services were  
20 scheduled” at the time of the protest (FAC ¶70). These pled facts cannot plausibly  
21 show a racial or class-based animus on the part of CodePink when it called for  
22 supporters to attend the protest.

23                  Sources cited in the First Amended Complaint actually show that CodePink  
24 was motivated by a desire to oppose “the illegal activities being promoted and  
25 executed at the land theft sale” and the ongoing genocide in Palestine that the sale  
26 was aiding and abetting (FAC fn. 10). CodePink specifically and clearly denounced  
27 the allegation that their activities were motivated by any anti-Semitic animus

1 whatsoever, and labelled the accusation a lie (FAC fn. 10). Even if CodePink had  
2 animus towards people who sought to attend the specific real estate event in order to  
3 purchase a house in Israel or Palestine, that would amount to an economic animus,  
4 which is specifically *not* a basis for a claim under 42 U.S.C. § 1985(3). United Bhd.  
5 of Carpenters and Joiners of Am, Local 610, AFL-CIO v. Scott, 463 U.S. at 837 (42  
6 U.S.C. § 1985(3) does not extend to “conspiracies motivated by bias towards others  
7 on account of their economic views, status, or activities”).

8 Plaintiffs have not set forth – and can not point to a single statement or action  
9 by CodePink that establishes a plausible factual basis for finding a racial or class-  
10 based animus, and in fact have provided the court with specific reasons to find such  
11 a motivation *implausible*.

12 Where, as here, the facts alleged in the complaint include clear, consistent  
13 statements by the Defendants regarding their motivation, the Court may not ignore  
14 these facts and should treat them as true under Rule 12(b)(6). Ordinarily affirmative  
15 defenses may not be raised by motion to dismiss . . . ." Scott v. Kuhlmann, 746 F.2d  
16 1377, 1378 (9th Cir. 1984) (per curiam). But a complaint may be dismissed when  
17 the allegations of the complaint give rise to an affirmative defense that clearly  
18 appears on the face of the pleading. McCalден v. California Library Ass'n, 955 F.2d  
19 1214, 1219 (9th Cir. 1990), *superseded by rule on other grounds as stated*  
20 *in Harmston v. City & County of San Francisco*, 627 F.3d 1273 (9th Cir. 2010).  
21 Boquist v. Courtney, 32 F.4th 764, 774 (9th Cir. 2022)

22                   **c. Plaintiffs Do Not Plausibly Allege That Their Harms Are**  
23                   **Fairly Traceable To Defendants CodePink**

24 None of Plaintiffs' pled injuries are traceable to any of CodePink's alleged  
25 conduct. Standing under Article III requires Plaintiffs to demonstrate a concrete  
26 injury that is fairly-traceable to the complained-of conduct. Alaska Right to Life  
27 Political Action Comm. v. Feldman, 504 F.3d 840, 848 (9th Cir. 2007) (quoting  
28

1 Lujan v. Defenders of Wildlife, 504 U.S. 555, 560-561 (1992)). Courts are reluctant  
2 to endorse standing theories that rest on speculation about the decisions of an  
3 independent actor. Clapper v. Amnesty Int'l. USA, 568 U.S. 398, 414 (2013).

4 Plaintiffs Higby and Maull plead no concrete injuries fairly traceable to the  
5 alleged conspiracy by CodePink. Plaintiff Helmann's pled injuries are that he was  
6 yelled at and insulted by John Does 2-11, and was prevented from exercising his  
7 freedom of religion at a place of worship (FAC ¶47-9). None of these injuries are  
8 fairly-traceable to any alleged conduct by CodePink. There are no facts plead that  
9 can plausibly show that CodePink controlled or directed, or even encouraged, John  
10 Does 2-11, nor the rest of "the mob" that scared Plaintiff Helmann, only that  
11 CodePink encouraged supporters to attend the anti-genocide demonstration and to  
12 bring signs, noisemakers, and flags. Helmann also admits that he ultimately decided  
13 not to enter the synagogue of his own volition because he felt threatened by the  
14 presence of the large demonstration (FAC ¶49).

15 Plaintiff's injuries are therefore not fairly-traceable to the alleged conduct of  
16 CodePink, but rather depend on the acts of unidentified third parties, including the  
17 individual who alleged bear sprayed Maull and Higby, the individuals who allegedly  
18 took photographs of houses and cars, the counter-protesters who—according to the  
19 sources in the First Amended Complaint—started the violent clash, and the police  
20 and private security who failed to sufficiently control the crowd. Video footage cited  
21 in the First Amended Complaint clearly shows that the anti-genocide protesters were  
22 the smaller of the various groups involved, were attacked by the pro-Israel counter-  
23 protesters, and were surrounded and kettled by security (FAC fn. 11, embedded  
24 video at 12:42-14:09). CodePink had no control over any of these actors, and  
25 Plaintiffs fail to offer a single fact that can plausibly suggest otherwise.

26 As such, because Plaintiffs' injuries depend upon the acts of independent  
27 third parties, and because they are not attributable to the alleged actions of  
28

1 CodePink, Plaintiffs have no standing to bring this suit under 42 U.S.C. § 1985(3),  
2 and the claims must be dismissed.

**6. Plaintiffs' Claims Under 42 U.S.C § 1986 Must Also Be Dismissed**

Plaintiffs fail to allege that CodePink engaged in a conspiracy, and thus fail to plausibly allege CodePink failed to prevent such injury. Where Plaintiffs fail to plausibly allege a conspiracy under 42 U.S.C. § 1985(3), they are also unable to meet the requirements for a claim under 42 U.S.C. § 1986. Trerice v. Pedersen 769 F.2d 1398 (9th Cir. 1985); see also Wagar v. Hasenkrug, 486 F. Supp. 47 (D. Mont. 1980) (holding that the dismissal of a claim under 42 U.S.C. § 1985(3) requires dismissal of any companion claim under 42 U.S.C. § 1986 for failure to prevent the alleged conspiracy). Plaintiffs fail to plausibly allege a conspiracy to deprive them of their rights under 42 U.S.C. § 1985(3), and their claim under 42 U.S.C. § 1986 must therefore be dismissed.

## 15 | VI. CONCLUSION

16 The Court has a gate-keeping function, even at the pleading stage. That  
17 function is perhaps most needed when political actors dress as litigants and demand  
18 that judges turn their courtrooms into stages for ideological or even theological  
19 disputes. That is why *Iqbal* and *Twombly* demand that that rhetoric must be tethered  
20 to facts, and that grand theories be supported by enough of those facts to at least  
21 make the theories plausible.

Those guardrails have been entirely breached here. Several groups called for a demonstration. CodePink asked its supporters to bring banners and megaphones, and it had no idea that by protesting a real estate sale it would be interfering with religious services on a Sunday, a day not notable for Jewish religious gatherings. Yet in this hyperbolic atmosphere a constitutionally protected call for legal protest is recast as a campaign of terror.

The law requires more of a plaintiff than hyperbole. There must be at least a nod to the reality-based community – a latticework of facts and inferences that are plausible. The plaintiffs have utterly failed at even this most basic requirement. There are no facts showing CodePink intended to obstruct religious services, no facts showing it called on anyone to do so, no facts showing state actors were involved, and no facts showing even the faintest link between a call for banners and megaphones and the chaotic scene when two very opposite groups were kept in close proximity to one another for hours.

When all of this was pointed out to the plaintiffs, they first promised to – and then refused to recast their complaint. The Plaintiffs' refusal to amend is an admission that they cannot save their rhetoric by grounding it in facts. Because there are none.

13 This complaint should be dismissed with prejudice.

Respectfully submitted,

Dated: October 24, 2024

KLEIMAN / RAJARAM

By: Mark Kleiman  
Mark Kleiman

Mark Kleiman

Attorneys for Defendants  
CODEPINK WOMEN FOR PEACE  
CODEPINK ACTION FUND